



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,801	10/22/2003	Jawed Asrar	17396/09169	6674
45850 7590 11/29/2007 NELSON MULLINS RILEY & SCARBOROUGH, LLP 1320 MAIN STREET-17TH FLOOR COLUMBIA, SC 29201			EXAMINER PRYOR, ALTON NATHANIEL	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 11/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/691,801

Applicant(s)

ASRAR ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-47, 68 and 93-103 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 42-47, 68, 93-103 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's arguments filed 9/14/07 have been fully considered but they are not persuasive. See argument below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 42-47and 68 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hofer et al (USPN 6875727; 4/5/05). Claims 93-103 are added to this rejection. Hofer teaches a method of controlling pest comprising applying to a plant seed a composition comprising abamectin (avermectin- biological / fermentation product). See abstract, claim 1. Hofer teaches that other actives including MTI-446 (dinotefuran) and spinosad (biological / fermentation product) can be added to the composition. See claim 7, column 112, line 30 –column 113 line 30. Hofer teaches that the composition is applied to the as a seed dressing meaning that the composition is being applied to unsown seed. See column 113 line 41 – column 36, Hofer teaches that the composition is applied to transgenic and non-transgenic crop seeds such as corn seed. Hofer does not exemplify a method of controlling pest comprising applying the composition comprising abamectin, MTI-446, and / or spinosad to plant seed. However, looking at claims 1 and 7 it is noted that Hofer strongly suggests an invention comprising abamectin and MTI-446 (dinotefuran). It would have been obvious at the time of Hofer's

invention to make an invention comprising abamectin and MTI-446 (dinotefuran). One would have been motivated to make this combination because it is strongly suggested by Hofer. See claims 1 and 7. It would have also been obvious to one having skill in the art at the time of Hofer invention to make an invention comprising abamectin, spinosad, and MTI-446. Note at column line of Hofer it is suggested that a variety actives can be added to the composition. See column 112 lines 56-64.

Response to Applicants' Argument

Applicant argues that Hofer does not a) teach the rate of application of a combination of dinotefuran and a biological /fermentation product insecticide to seed, b) teach or suggest that the actives must be in a certain ratio, c) the weight ratio of dinotefuran to the biological /fermentation product insecticide would have an effect at all on the efficacy of treatment. The Examiner argues that claims 1 and 7 of Hofer strongly suggests an invention comprising abamectin and MTI-446 (dinotefuran). It would have been obvious at the time of Hofer's invention to make an invention comprising abamectin and MTI-446 (dinotefuran). One would have been motivated to make this combination because it is strongly suggested by Hofer. See claims 1 and 7. It would have also been obvious to one having skill in the art at the time of Hofer invention to make an invention comprising abamectin, spinosad, and MTI-446. Note at column line of Hofer it is suggested that a variety actives can be added to the composition. See column 112 lines 56-64. It would have been obvious to try a variety of application rates, active ratios and weight ratios because one having ordinary skill in the art would have been motivated to determine the optimum application rate, active ratio and weight ratio.

(Obvious to try stems from KSR). It is possible the optimum application rate, active ratio and weight ratio determined would have fallen within the claimed application rate, active ratio and weight ratio range.

Claims 42-47 and 68 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (USAN 2003050326; 3/13/03). Claims 93-103 are added to this rejection. Lee teaches a method of controlling pest comprising applying to a plant seed a composition comprising nitroguanidine compounds. See paragraph 1. Lee teaches that other actives including abamectin (avermectin- biological / fermentation product) and spinosad (biological / fermentation product) can be added to the composition. See paragraphs 62-66. Lee teaches that the composition can be used as a seed dressing meaning that the composition is being applied to unsown seed. See paragraph 67. Lee teaches that the composition is applied to transgenic and non-transgenic crop seeds such as corn seed. See paragraph 5. Lee does not exemplify a method of controlling pest comprising applying the composition comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. Lee does not specifically teach MTI 446 as the nitroguanidine compound. However the broad teaching of nitroguanidine compound in Lee covers MTI a species. One having ordinary skill in the art would have been expected to use the MTI 446 at the time Lee's invention was made. One would have motivate to do this since compound in a genus have similar chemical and physical properties and therefore should show similar activity when used. However, in the reviewing of paragraphs 1,62-67 it is noted that Lee strongly suggests an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. It

would have been obvious at the time of Lee's invention to make an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. One would have been motivated to make this combination because it is strongly suggested by Lee.

Response to Applicants' Argument

Applicant argues that Lee does not a) teach a treatment comprising a combination of dinotefuran and a biological /fermentation product insecticide, b) teach or suggest the rate of application of a combination of dinotefuran and a biological /fermentation product insecticide to seed c) teach or suggest that the actives must be in a certain ratio, d) the weight ratio of dinotefuran to the biological /fermentation product insecticide would have an effect at all on the efficacy of treatment. The Examiner agrees that Lee does not exemplify a method of controlling pest comprising applying the composition comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. However, the Examiner argues that Lee does not specifically teach MTI 446 as the nitroguanidine compound. The broad teaching of nitroguanidine compound in Lee covers MTI 446 as a species. One having ordinary skill in the art would have been expected to use the MTI 446 at the time Lee's invention was made. One would have been motivate to do this since compound in a genus have similar chemical and physical properties and therefore should show similar activity when used. However, in the reviewing of paragraphs 1,62-67 it is noted that Lee strongly suggests an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. It would have been obvious at the time of Lee's invention to make an invention comprising the nitroguanidine MTI 446 plus abamectin and / or spinosad as a seed dressing. One

would have been motivated to make this combination because it is strongly suggested by Lee. It would have been obvious to try a variety of application rates, active ratios and weight ratios because one having ordinary skill in the art would have been motivated to determine the optimum application rate, active ratio and weight ratio. (Obvious to try stems from KSR). It is possible the optimum application rate, active ratio and weight ratio determined would have fallen within the claimed application rate, active ratio and weight ratio range.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 42-47 and 68 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 27 of U.S. Patent No.

6586365 in view of Lee et al (USAN 2003050326; 3/13/03). Claims 93-103 are added to this rejection. USPN '365 claims a method of protecting transgenic corn plants from pests comprising applying to the transgenic corn plant seed a composition comprising the nitroguanidine compound clothianidin. Note instant claims are to a method of controlling pests on plants including transgenic corn plants comprising applying to the seed of the transgenic plant a nitroguanidine compound (specifically MTI 446). Note USPN '365 does not claim a method comprising biological / fermentation products such as avermectin and spinosad and the nitroguanidine compound MTI 446. It would have been obvious to use clothianidin and MTI-446 interchangeably, because of the similarity between the nitroguanidine compounds. With respect to USPN '365, Lee makes it obvious to add avermectin and / or spinosad to nitroguanidine compounds. Lee teaches a method of controlling pest comprising applying to a plant seed a composition comprising nitroguanidine compounds. See paragraph 1. Lee teaches that other actives including abamectin (avermectin- biological / fermentation product) and spinosad (biological / fermentation product) can be added to the composition. See paragraphs 62-66. Lee teaches that the composition can be used as a seed dressing meaning that the composition is being applied to unsown seed. See paragraph 67. Lee teaches that the composition is applied to transgenic and non-transgenic crop seeds such as corn seed. See paragraph 5. Lee does not exemplify a method of controlling pest comprising applying the composition comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. However, in the reviewing of paragraphs 1,62-67 it is noted that Lee strongly suggests an invention comprising nitroguanidine plus abamectin and / or

spinosad as a seed dressing. It would have been obvious at the time of Lee's invention to make an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. One would have been motivated to make this combination because it is strongly suggested by Lee. It would have been obvious to modify the invention of USPN '365 with Lee. One would have been motivated to do this since Lee discloses the combination of spinosad and / or MTI-466 plus a nitroguanidine compound.

Response to Applicants' arguments

Applicants argue that neither claims 1 and 27 of USPN 6586365 nor the Lee article a) teach seed treatment with a combination of dinotefuran and biological / fermentation product insecticide b) suggests that the two insecticides are used in a combined amount between about 0.01% and 1% based on seed weight and c) teach where the ratio of the dinotefuran to the biological / fermentation product insecticide is between 100:1 and 1:100. Applicants argue that Lee does not exemplify a method of controlling pest comprising applying the composition comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. However, in the reviewing of paragraphs 1,62-67 it is noted that Lee strongly suggests an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. It would have been obvious at the time of Lee's invention to make an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. One would have been motivated to make this combination because it is strongly suggested by Lee. It would have been obvious to modify the invention of USPN '365 with Lee. One would have been motivated to do this since Lee discloses the combination of spinosad and / or MTI-466 plus a

nitroguanidine compound. It would have been obvious to try a variety of application rates, active ratios and weight ratios because one having ordinary skill in the art would have been motivated to determine the optimum application rate, active ratio and weight ratio. (Obvious to try stems from KSR). It is possible the optimum application rate, active ratio and weight ratio determined would have fallen within the claimed application rate, active ratio and weight ratio range.

Claims 42-47 and 68 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4,9,10,19,26,28-36,39-41,48,49 of U.S. Patent No. 6660690 in view of Lee et al (USAN 2003050326; 3/13/03). Claims 93-103 are added to this rejection. USPN '690 claims a method of protecting transgenic corn plants from pests comprising applying to the transgenic corn plant seed a composition comprising nitroguanidine compound, biological / fermentation and a pyrethrin compound. Note instant claims are to a method of controlling pests on plants including transgenic corn plants comprising applying to the seed of the transgenic plant a nitroguanidine compound (specifically MTI 446). Note USPN '690 does not claim a method specifically comprising biological / fermentation products such as avermectin and spinosad and the nitroguanidine compound MTI 446. It would have been obvious to make an invention specifically comprising biological / fermentation products such as avermectin and spinosad and the nitroguanidine compound MTI 446. With respect to USPN '690, Lee makes it obvious to add avermectin and / or spinosad to nitroguanidine compounds. Lee teaches a method of controlling pest comprising applying to a plant seed a composition comprising nitroguanidine compounds. See paragraph 1. Lee

teaches that other actives including abamectin (avermectin- biological / fermentation product) and spinosad (biological / fermentation product) can be added to the composition. See paragraphs 62-66. Lee teaches that the composition can be used as a seed dressing meaning that the composition is being applied to unsown seed. See paragraph 67. Lee teaches that the composition is applied to transgenic and non-transgenic crop seeds such as corn seed. See paragraph 5. Lee does not exemplify a method of controlling pest comprising applying the composition comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. However, in the reviewing of paragraphs 1,62-67 it is noted that Lee strongly suggests an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. It would have been obvious at the time of Lee's invention to make an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. One would have been motivated to make this combination because it is strongly suggested by Lee. It would have been obvious to modify the invention of USPN '690 with Lee. One would have been motivated to do this since Lee discloses the combination of spinosad and / or MTI-466 plus a nitroguanidine compound.

Response to Applicants' argument

Applicants argue that neither claims 1-4,9,10,19,26,28-36,39-41,48 and 49 of USPN 6660690 nor the Lee article a) teach seed treatment with a combination of dinotefuran and biological / fermentation product insecticide b) suggests that the two insecticides are used in a combined amount between about 0.01% and 1% based on seed weight and c) teach where the ratio of the dinotefuran to the biological /

fermentation product insecticide is between 100:1 and 1:100. USPN '690 claims a method of protecting transgenic corn plants from pests comprising applying to the transgenic corn plant seed a composition comprising nitroguanidine compound, biological / fermentation and a pyrethrin compound. The Examiner argues that Lee teaches a method of controlling pest comprising applying to a plant seed a composition comprising nitroguanidine compounds. See paragraph 1. Lee teaches that other actives including abamectin (avermectin- biological / fermentation product) and spinosad (biological / fermentation product) can be added to the composition. See paragraphs 62-66. Lee teaches that the composition can be used as a seed dressing meaning that the composition is being applied to unsown seed. See paragraph 67. Lee teaches that the composition is applied to transgenic and non-transgenic crop seeds such as corn seed. See paragraph 5. Lee does not exemplify a method of controlling pest comprising applying the composition comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. However, in the reviewing of paragraphs 1,62-67 it is noted that Lee strongly suggests an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. It would have been obvious at the time of Lee's invention to make an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. One would have been motivated to make this combination because it is strongly suggested by Lee. It would have been obvious to modify the invention of USPN '690 with Lee. One would have been motivated to do this since Lee discloses the combination of spinosad and / or MTI-466 plus a nitroguanidine compound. It would have been obvious to try a variety of application rates, active ratios and weight ratios

because one having ordinary skill in the art would have been motivated to determine the optimum application rate, active ratio and weight ratio. (Obvious to try stems from KSR). It is possible the optimum application rate, active ratio and weight ratio determined would have fallen within the claimed application rate, active ratio and weight ratio range.

Claims 42-47 and 68 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,2,20,21,28,42 of U.S. Patent No. 6593273. Claims 93-103 are added to this rejection. Although the conflicting claims are not identical, they are not patentably distinct from each other because both USPN '273 and instant invention claim similar suggest matter. Asrar claims a method for protecting a transgenic corn against damage by pest comprising treating corn seed having transgenic event (cry 3 protein) with one or more pesticides including a nitroguanidine insecticide and biological / fermentation product. A seed treated by the method is produced. Asrar defines dinotefuran as a nitroguanidine pesticide and spinosad as the biological / fermentation product. See USPN '273 column 10 lines 62-64, column 11 lines 26-28. Asrar defines seed as including unsown seed. See USPN '273 column 13 lines 59-65. Asrar does not claim an invention wherein the nitroguanidine compound is required as in instant claims. However, based on claim 28 of USPN '273 one would have been led to select a nitroguanidine since claim 28 specifies the nitroguanidine insecticide. For this reason instant invention comprising a nitroguanidine plus spinosad is made obvious by USPN '273.

Response to Applicants' argument

Applicants argue that none of the claims 1,2,20,21,28,42 of U.S. Patent No. 6593273 a) teach seed treatment with a combination of dinotefuran and biological / fermentation product insecticide b) suggests that the two insecticides are used in a combined amount between about 0.01% and 1% based on seed weight and c) teach where the ratio of the dinotefuran to the biological / fermentation product insecticide is between 100:1 and 1:100. The Examiner argues that Asrar claims a method for protecting a transgenic corn against damage by pest comprising treating corn seed having transgenic event (cry 3 protein) with one or more pesticides including a nitroguanidine insecticide and biological / fermentation product. A seed treated by the method is produced. Asrar defines dinotefuran as a nitroguanidine pesticide and spinosad as the biological / fermentation product. See USPN '273 column 10 lines 62-64, column 11 lines 26-28. Asrar defines seed as including unsown seed. See USPN '273 column 13 lines 59-65. Asrar does not claim an invention wherein the nitroguanidine compound is required as in instant claims. However, based on claim 28 of USPN '273 one would have been led to select a nitroguanidine since claim 28 specifies the nitroguanidine insecticide. For this reason instant invention comprising a nitroguanidine plus spinosad is made obvious by USPN '273. It would have been obvious to try a variety of application rates, active ratios and weight ratios because one having ordinary skill in the art would have been motivated to determine the optimum application rate, active ratio and weight ratio. (Obvious to try stems from KSR). It is

possible the optimum application rate, active ratio and weight ratio determined would have fallen within the claimed application rate, active ratio and weight ratio range.

Claims 42-47 and 68 remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,24 and 28 of copending Application No. 09/968174 in view of Lee et al (USAN 2003050326; 3/13/03). Claims 93-103 are added to this rejection. USAN '174 claims a method of protecting transgenic corn plants from pests comprising applying to the transgenic corn plant seed a composition comprising the nitroguanidine compound thiamethoxam. Note instant claims are to a method of controlling pests on plants including transgenic corn plants comprising applying to the seed of the transgenic plant a nitroguanidine compound (specifically MTI 446). Note USAN '174 does not claim a method comprising biological / fermentation products such as avermectin and spinosad and the nitroguanidine compound MTI 446. It would have been obvious to use chlothianidin and MTI-446 interchangeably, because of the similarity between the nitroguanidine compounds. With respect to USPN '174, Lee makes it obvious to add avermectin and / or spinosad to nitroguanidine compounds. Lee teaches a method of controlling pest comprising applying to a plant seed a composition comprising nitroguanidine compounds. See paragraph 1. Lee teaches that other actives including abamectin (avermectin- biological / fermentation product) and spinosad (biological / fermentation product) can be added to the composition. See paragraphs 62-66. Lee teaches that the composition can be used as a seed dressing meaning that the composition is being applied to unsown seed. See paragraph 67. Lee teaches that the composition is applied to transgenic and non-transgenic crop seeds such as corn seed. See paragraph 5. Lee does not exemplify a method of controlling pest comprising applying the composition comprising

nitroguanidine plus abamectin and / or spinosad as a seed dressing. However, in the reviewing of paragraphs 1,62-67 it is noted that Lee strongly suggests an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. It would have been obvious at the time of Lee's invention to make an invention comprising nitroguanidine plus abamectin and / or spinosad as a seed dressing. One would have been motivated to make this combination because it is strongly suggested by Lee. It would have been obvious to modify the invention of USPN '174 with Lee. One would have been motivated to do this since Lee discloses the combination of spinosad and / or MTI-466 plus a nitroguanidine compound.

This is a provisional obviousness-type double patenting rejection.

Response to Applicants' argument

This rejection will be maintained until all other rejections are withdrawn.

Application Information

Examiner acknowledges Applicants' election of species comprising denotefuran and a biological / fermentation product. The election is not allowable.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

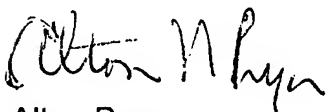
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor
Primary Examiner
AU 1616